

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 579

Introduced by Assembly Member Swanson

February 21, 2007

~~An act to amend Section 7110.5 of the Government Code, relating to~~
~~An act to amend Sections 7116 and 7117 of the Government Code,~~
~~and to amend Sections 17053.45, 17268, 23645, and 24356.8 of the~~
~~Revenue and Taxation Code, relating to military base recovery areas.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 579, as amended, Swanson. Military base recovery areas.

Existing law authorizes a local governing body, as defined, to propose to the Department of Housing and Community Development a local agency military base recovery area to receive specified economic incentives to offset military base closures. The designations are binding for a period of 8 years.

~~This bill would make the designation binding for an additional 7 years if specified conditions occur, as provided.~~

The Personal Income Tax Law and the Corporation Tax Law authorize various credits and deductions against the taxes imposed by those laws, including a credit for sales and use tax paid by a taxpayer, as defined, for the purchase of qualified property, as defined, for use in a local agency military base recovery area (LAMBRA), and a specified accelerated deduction in connection with property that is used exclusively in a trade or business conducted within a LAMBRA. Among other things, in order to be eligible for the credits and deduction, a

taxpayer is required to increase, for the first 2 taxable years, the number of jobs in the LAMBRA.

This bill would delete the requirement to increase the number of jobs in the LAMBRA. This bill would also require each local military base recovery area governing body to update its economic development plan, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The health, safety, and welfare of the people of California
4 depend upon the development, stability, and expansion of private
5 business, industry, and commerce, and that there are certain areas
6 within the state that have been and will be severely economically
7 impacted because of the closure of military bases by the federal
8 Department of Defense.

9 (b) The closure of 29 major military bases resulted in a loss of
10 nearly 54 percent of the state’s military personnel since 1988 which
11 translates into a loss of more than 93,000 California military and
12 civilian jobs. California has recaptured less than 60 percent of
13 those jobs since the rounds of base closures began. Military base
14 closures have resulted in a loss of \$10 billion in annual revenues.

15 (c) That many communities want and need to attract new
16 business and private investment to compensate for the loss of
17 revenue that occurs when a military base closes or downsizes, but
18 that many communities have insufficient means to do so.

19 SEC. 2. Section 7116 of the Government Code is amended to
20 read:

21 7116. (a) A local agency military base recovery area governing
22 body shall provide information at the request of the department as
23 necessary for the department to prepare the report required pursuant
24 to Section 7115.

25 (b) A local agency military base recovery area governing body
26 shall provide information at the request of the department as
27 necessary for the department to determine whether the governing
28 body is complying with the terms of the approved application.

1 (c) If the department determines that a local agency military
2 base recovery area governing body is not complying with the terms
3 of the approved application for designation, the department shall
4 provide written notice of the program deficiencies and the
5 governing body shall be given six months to correct the
6 deficiencies.

7 (d) The department shall revoke the designation of a local
8 agency military base recovery area if the department determines
9 that the governing body granted the designation has not complied
10 with the terms of the approved application for designation within
11 six months after written notice pursuant to subdivision (c), and
12 shall not be considered a local agency military base recovery area
13 until the deficiencies are corrected.

14 (e) Any companies located in the local agency military base
15 recovery area shall not be penalized during any period of revocation
16 and may continue to operate with incentives provided pursuant to
17 this chapter.

18 (f) An audit of the program shall be made by the department
19 pursuant to Section 7076.1 with the cooperation of the governing
20 body to determine the effectiveness of the program under this
21 chapter.

22 (g) *Each local agency military base recovery area governing*
23 *body shall, on or before January 1, 2010, update its economic*
24 *development plan that was included in its original application for*
25 *designation.*

26 *SEC. 3. Section 7117 of the Government Code, as added by*
27 *Section 1 of Chapter 1216 of the Statutes of 1993, is amended to*
28 *read:*

29 7117. A business located within a local agency military base
30 recovery area shall be eligible for the tax benefits set forth within
31 Sections ~~17053.45~~, 17053.46, ~~17268~~, 17276.2, ~~23645~~, 23646,
32 ~~24356.8~~, and 24416.2 of the Revenue and Taxation Code only if
33 it provides a net increase in jobs in the local agency military base
34 recovery area within the first two years from the business' initial
35 date of operation. If the business fails to meet its obligations under
36 the local agency military base recovery area plan or the
37 requirements of this act, any tax benefits received under those
38 sections shall be recaptured, as provided in each of those sections.

39 *SEC. 4. Section 17053.45 of the Revenue and Taxation Code*
40 *is amended to read:*

1 17053.45. (a) For each taxable year beginning on or after
2 January 1, 1995, there shall be allowed as a credit against the “net
3 tax” (as defined by Section 17039) an amount equal to the sales
4 or use tax paid or incurred by the taxpayer in connection with the
5 purchase of qualified property to the extent that the qualified
6 property does not exceed a value of one million dollars
7 (\$1,000,000).

8 (b) For purposes of this section:

9 (1) “LAMBRA” means a local agency military base recovery
10 area designated in accordance with Section 7114 of the Government
11 Code.

12 (2) “Taxpayer” means a taxpayer that conducts a trade or
13 business within a LAMBRA and, for the first two taxable years,
14 has a net increase in jobs (defined as 2,000 paid hours per employee
15 per year) of one or more employees in the LAMBRA.

16 (A) ~~The net increase in the number of jobs shall be determined
17 by subtracting the total number of full-time employees (defined
18 as 2,000 paid hours per employee per year) the taxpayer employed
19 in this state in the taxable year prior to commencing business
20 operations in the LAMBRA from the total number of full-time
21 employees the taxpayer employed in this state during the second
22 taxable year after commencing business operations in the
23 LAMBRA. For taxpayers who commence doing business in this
24 state with their LAMBRA business operation, the number of
25 employees for the taxable year prior to commencing business
26 operations in the LAMBRA shall be zero. If the taxpayer has a net
27 increase in jobs in the state, the credit shall be allowed only if one
28 or more full-time employees is employed within the LAMBRA.~~

29 (B) ~~The total number of employees employed in the LAMBRA
30 shall equal the sum of both of the following:~~

31 (i) ~~The total number of hours worked in the LAMBRA for the
32 taxpayer by employees (not to exceed 2,000 hours per employee)
33 who are paid an hourly wage divided by 2,000.~~

34 (ii) ~~The total number of months worked in the LAMBRA for
35 the taxpayer by employees who are salaried employees divided
36 by 12.~~

37 (C) ~~In the case of a taxpayer who first commences doing
38 business in the LAMBRA during the taxable year, for purposes of
39 clauses (i) and (ii), respectively, of subparagraph (B), the divisors
40 “2,000” and “12” shall be multiplied by a fraction, the numerator~~

1 of which is the number of months of the taxable year that the
2 taxpayer was doing business in the LAMBRA and the denominator
3 of which is 12.

4 (3) “Qualified property” means property that is each of the
5 following:

6 (A) Purchased by the taxpayer for exclusive use in a trade or
7 business conducted within a LAMBRA.

8 (B) Purchased before the date the LAMBRA designation expires,
9 is no longer binding, or becomes inoperative.

10 (C) Any of the following:

11 (i) High technology equipment, including, but not limited to,
12 computers and electronic processing equipment.

13 (ii) Aircraft maintenance equipment, including, but not limited
14 to, engine stands, hydraulic mules, power carts, test equipment,
15 handtools, aircraft start carts, and tugs.

16 (iii) Aircraft components, including, but not limited to, engines,
17 fuel control units, hydraulic pumps, avionics, starts, wheels, and
18 tires.

19 (iv) Section 1245 property, as defined in Section 1245(a)(3) of
20 the Internal Revenue Code.

21 (c) The credit provided under subdivision (a) shall be allowed
22 only for qualified property manufactured in California unless
23 qualified property of a comparable quality and price is not available
24 for timely purchase and delivery from a California manufacturer.

25 (d) In the case where the credit otherwise allowed under this
26 section exceeds the “net tax” for the taxable year, that portion of
27 the credit which exceeds the “net tax” may be carried over and
28 added to the credit, if any, in succeeding years, until the credit is
29 exhausted. The credit shall be applied first to the earliest taxable
30 years possible.

31 (e) Any taxpayer who elects to be subject to this section shall
32 not be entitled to increase the basis of the property as otherwise
33 required by Section 164(a) of the Internal Revenue Code with
34 respect to sales or use tax paid or incurred in connection with the
35 purchase of qualified property.

36 (f) (1) The amount of credit otherwise allowed under this
37 section and Section 17053.46, including any credit carryover from
38 prior years, that may reduce the “net tax” for the taxable year shall
39 not exceed the amount of tax that would be imposed on the
40 taxpayer’s business income attributed to a LAMBRA determined

1 as if that attributable income represented all the income of the
2 taxpayer subject to tax under this part.

3 (2) Attributable income is that portion of the taxpayer's
4 California source business income that is apportioned to the
5 LAMBRA. For that purpose, the taxpayer's business income that
6 is attributable to sources in this state shall first be determined in
7 accordance with Chapter 17 (commencing with Section 25101) of
8 Part 11. That business income shall be further apportioned to the
9 LAMBRA in accordance with Article 2 (commencing with Section
10 25120) of Chapter 17 of Part 11, as modified for purposes of this
11 section in accordance with paragraph (3).

12 (3) Income shall be apportioned to a LAMBRA by multiplying
13 the total California business income of the taxpayer by a fraction,
14 the numerator of which is the property factor, plus the payroll
15 factor, and the denominator of which is two. For purposes of this
16 paragraph:

17 (A) The property factor is a fraction, the numerator of which is
18 the average value of the taxpayer's real and tangible personal
19 property owned or rented and used in the LAMBRA during the
20 taxable year, and the denominator of which is the average value
21 of all the taxpayer's real and tangible personal property owned or
22 rented and used in this state during the taxable year.

23 (B) The payroll factor is a fraction, the numerator of which is
24 the total amount paid by the taxpayer in the LAMBRA during the
25 taxable year for compensation, and the denominator of which is
26 the total compensation paid by the taxpayer in this state during the
27 taxable year.

28 (4) The portion of any credit remaining, if any, after application
29 of this subdivision, shall be carried over to succeeding taxable
30 years, as if it were an amount exceeding the "net tax" for the
31 taxable year, as provided in subdivision (d).

32 (g) ~~(1)~~ If the qualified property is disposed of or no longer used
33 by the taxpayer in the LAMBRA, at any time before the close of
34 the second taxable year after the property is placed in service, the
35 amount of the credit previously claimed, with respect to that
36 property, shall be added to the taxpayer's tax liability in the taxable
37 year of that disposition or nonuse.

38 ~~(2) At the close of the second taxable year, if the taxpayer has~~
39 ~~not increased the number of its employees as determined by~~
40 ~~paragraph (2) of subdivision (b), then the amount of the credit~~

1 ~~previously claimed shall be added to the taxpayer's net tax for the~~
2 ~~taxpayer's second taxable year.~~

3 (h) If the taxpayer is allowed a credit for qualified property
4 pursuant to this section, only one credit shall be allowed to the
5 taxpayer under this part with respect to that qualified property.

6 (i) The amendments made to this section by ~~the act adding this~~
7 ~~subdivision~~ *Section 5 of Chapter 987 of the Statutes of 1999* shall
8 apply to taxable years beginning on or after January 1, 1998.

9 *SEC. 5. Section 17268 of the Revenue and Taxation Code is*
10 *amended to read:*

11 17268. (a) For each taxable year beginning on or after January
12 1, 1995, a taxpayer may elect to treat 40 percent of the cost of any
13 Section 17268 property as an expense that is not chargeable to the
14 capital account. Any cost so treated shall be allowed as a deduction
15 for the taxable year in which the taxpayer places the Section 17268
16 property in service.

17 (b) In the case of a husband or wife filing separate returns for
18 a taxable year in which a spouse is entitled to the deduction under
19 subdivision (a), the applicable amount shall be equal to 50 percent
20 of the amount otherwise determined under subdivision (a).

21 (c) (1) An election under this section for any taxable year shall
22 meet both of the following requirements:

23 (A) Specify the items of Section 17268 property to which the
24 election applies and the portion of the cost of each of those items
25 that is to be taken into account under subdivision (a).

26 (B) Be made on the taxpayer's return of the tax imposed by this
27 part for the taxable year.

28 (2) Any election made under this section, and any specification
29 contained in that election, may not be revoked except with the
30 consent of the Franchise Tax Board.

31 (d) (1) For purposes of this section, "Section 17268 property"
32 means any recovery property that is each of the following:

33 (A) Section 1245 property (as defined in Section 1245(a)(3) of
34 the Internal Revenue Code).

35 (B) Purchased by the taxpayer for exclusive use in a trade or
36 business conducted within a LAMBRA.

37 (C) Purchased before the date the LAMBRA designation expires,
38 is no longer binding, or becomes inoperative.

39 (2) For purposes of paragraph (1), "purchase" means any
40 acquisition of property, but only if both of the following apply:

1 (A) The property is not acquired from a person whose
2 relationship to the person acquiring it would result in the
3 disallowance of losses under Section 267 or 707(b) of the Internal
4 Revenue Code (but, in applying Section 267(b) and Section 267(c)
5 of the Internal Revenue Code for purposes of this section, Section
6 267(c)(4) of the Internal Revenue Code shall be treated as
7 providing that the family of an individual shall include only his or
8 her spouse, ancestors, and lineal descendants).

9 (B) The basis of the property in the hands of the person acquiring
10 it is not determined by either of the following:

11 (i) In whole or in part by reference to the adjusted basis of the
12 property in the hands of the person from whom acquired.

13 (ii) Under Section 1014 of the Internal Revenue Code, relating
14 to basis of property acquired from a decedent.

15 (3) For purposes of this section, the cost of property does not
16 include that portion of the basis of the property that is determined
17 by reference to the basis of other property held at any time by the
18 person acquiring the property.

19 (4) This section shall not apply to estates and trusts.

20 (5) This section shall not apply to any property for which the
21 taxpayer may not make an election for the taxable year under
22 Section 179 of the Internal Revenue Code because of the provisions
23 of Section 179(d) of the Internal Revenue Code.

24 (6) In the case of a partnership, the dollar limitation in
25 subdivision (f) shall apply at the partnership level and at the partner
26 level.

27 (7) This section shall not apply to any property described in
28 Section 168(f) of the Internal Revenue Code, relating to property
29 to which Section 168 of the Internal Revenue Code does not apply.

30 (e) For purposes of this section:

31 (1) "LAMBRA" means a local agency military base recovery
32 area designated in accordance with the provisions of Section 7114
33 of the Government Code.

34 (2) "Taxpayer" means a taxpayer that conducts a trade or
35 business within a LAMBRA and, for the first two taxable years,
36 has a net increase in jobs (defined as 2,000 paid hours per employee
37 per year) of one or more employees in the LAMBRA.

38 (A) The net increase in the number of jobs shall be determined
39 by subtracting the total number of full-time employees (defined
40 as 2,000 paid hours per employee per year) the taxpayer employed

1 in this state in the taxable year prior to commencing business
 2 operations in the LAMBRA from the total number of full-time
 3 employees the taxpayer employed in this state during the second
 4 taxable year after commencing business operations in the
 5 LAMBRA. For taxpayers who commence doing business in this
 6 state with their LAMBRA business operation, the number of
 7 employees for the taxable year prior to commencing business
 8 operations in the LAMBRA shall be zero. If the taxpayer has a net
 9 increase in jobs in the state, the credit shall be allowed only if one
 10 or more full-time employees is employed within the LAMBRA.

11 (B) The total number of employees employed in the LAMBRA
 12 shall equal the sum of both of the following:

13 (i) The total number of hours worked in the LAMBRA for the
 14 taxpayer by employees (not to exceed 2,000 hours per employee)
 15 who are paid an hourly wage divided by 2,000.

16 (ii) The total number of months worked in the LAMBRA for
 17 the taxpayer by employees who are salaried employees divided
 18 by 12.

19 (C) In the case of a taxpayer who first commences doing
 20 business in the LAMBRA during the taxable year, for purposes of
 21 clauses (i) and (ii), respectively, of subparagraph (B) the divisors
 22 “2,000” and “12” shall be multiplied by a fraction, the numerator
 23 of which is the number of months of the taxable year that the
 24 taxpayer was doing business in the LAMBRA and the denominator
 25 of which is 12.

26 (f) The aggregate cost of all Section 17268 property that may
 27 be taken into account under subdivision (a) for any taxable year
 28 shall not exceed the following applicable amounts for the taxable
 29 year of the designation of the relevant LAMBRA and taxable years
 30 thereafter:

31		
32		The applicable
33		amount is:
34	Taxable year of designation.....	\$100,000
35	1st taxable year thereafter.....	100,000
36	2nd taxable year thereafter.....	75,000
37	3rd taxable year thereafter.....	75,000
38	Each taxable year thereafter.....	50,000

39

1 (g) This section shall apply only to property that is used
 2 exclusively in a trade or business conducted within a LAMBRA.

3 (h) ~~(1)~~ Any amounts deducted under subdivision (a) with respect
 4 to property that ceases to be used in the trade or business within
 5 a LAMBRA at any time before the close of the second taxable
 6 year after the property was placed in service shall be included in
 7 income for that year.

8 ~~(2) At the close of the second taxable year, if the taxpayer has~~
 9 ~~not increased the number of its employees as determined by~~
 10 ~~paragraph (2) of subdivision (e), then the amount of the deduction~~
 11 ~~previously claimed shall be added to the taxpayer's taxable income~~
 12 ~~for the taxpayer's second taxable year.~~

13 (i) Any taxpayer who elects to be subject to this section shall
 14 not be entitled to claim for the same property the deduction under
 15 Section 179 of the Internal Revenue Code, relating to an election
 16 to expense certain depreciable business assets.

17 *SEC. 6. Section 23645 of the Revenue and Taxation Code is*
 18 *amended to read:*

19 23645. (a) For each taxable year beginning on or after January
 20 1, 1995, there shall be allowed as a credit against the "tax" (as
 21 defined by Section 23036) for the taxable year an amount equal
 22 to the sales or use tax paid or incurred by the taxpayer in
 23 connection with the purchase of qualified property to the extent
 24 that the qualified property does not exceed a value of twenty
 25 million dollars (\$20,000,000).

26 (b) For purposes of this section:

27 (1) "LAMBRA" means a local agency military base recovery
 28 area designated in accordance with Section 7114 of the Government
 29 Code.

30 (2) "Taxpayer" means a corporation that conducts a trade or
 31 business within a LAMBRA and, for the first two taxable years,
 32 has a net increase in jobs (defined as 2,000 paid hours per employee
 33 per year) of one or more employees in the LAMBRA.

34 ~~(A) The net increase in the number of jobs shall be determined~~
 35 ~~by subtracting the total number of full-time employees (defined~~
 36 ~~as 2,000 paid hours per employee per year) the taxpayer employed~~
 37 ~~in this state in the taxable year prior to commencing business~~
 38 ~~operations in the LAMBRA from the total number of full-time~~
 39 ~~employees the taxpayer employed in this state during the second~~
 40 ~~taxable year after commencing business operations in the~~

1 ~~LAMBRA. For taxpayers who commence doing business in this~~
2 ~~state with their LAMBRA business operation, the number of~~
3 ~~employees for the taxable year prior to commencing business~~
4 ~~operations in the LAMBRA shall be zero. If the taxpayer has a net~~
5 ~~increase in jobs in the state, the credit shall be allowed only if one~~
6 ~~or more full-time employees is employed within the LAMBRA.~~

7 ~~(B) The total number of employees employed in the LAMBRA~~
8 ~~shall equal the sum of both of the following:~~

9 ~~(i) The total number of hours worked in the LAMBRA for the~~
10 ~~taxpayer by employees (not to exceed 2,000 hours per employee)~~
11 ~~who are paid an hourly wage divided by 2,000.~~

12 ~~(ii) The total number of months worked in the LAMBRA for~~
13 ~~the taxpayer by employees that are salaried employees divided by~~
14 ~~12.~~

15 ~~(C) In the case of a taxpayer who first commences doing~~
16 ~~business in the LAMBRA during the taxable year, for purposes of~~
17 ~~clauses (i) and (ii), respectively, of subparagraph (B) the divisors~~
18 ~~“2,000” and “12” shall be multiplied by a fraction, the numerator~~
19 ~~of which is the number of months of the taxable year that the~~
20 ~~taxpayer was doing business in the LAMBRA and the denominator~~
21 ~~of which is 12.~~

22 ~~(3) “Qualified property” means property that is each of the~~
23 ~~following:~~

24 ~~(A) Purchased by the taxpayer for exclusive use in a trade or~~
25 ~~business conducted within a LAMBRA.~~

26 ~~(B) Purchased before the date the LAMBRA designation expires,~~
27 ~~is no longer binding, or becomes inoperative.~~

28 ~~(C) Any of the following:~~

29 ~~(i) High technology equipment, including, but not limited to,~~
30 ~~computers and electronic processing equipment.~~

31 ~~(ii) Aircraft maintenance equipment, including, but not limited~~
32 ~~to, engine stands, hydraulic mules, power carts, test equipment,~~
33 ~~handtools, aircraft start carts, and tugs.~~

34 ~~(iii) Aircraft components, including, but not limited to, engines,~~
35 ~~fuel control units, hydraulic pumps, avionics, starts, wheels, and~~
36 ~~tires.~~

37 ~~(iv) Section 1245 property, as defined in Section 1245(a)(3) of~~
38 ~~the Internal Revenue Code.~~

39 ~~(c) The credit provided under subdivision (a) shall only be~~
40 ~~allowed for qualified property manufactured in California unless~~

1 qualified property of a comparable quality and price is not available
2 for timely purchase and delivery from a California manufacturer.

3 (d) In the case where the credit otherwise allowed under this
4 section exceeds the “tax” for the taxable year, that portion of the
5 credit which exceeds the “tax” may be carried over and added to
6 the credit, if any, in succeeding years, until the credit is exhausted.
7 The credit shall be applied first to the earliest taxable years
8 possible.

9 (e) Any taxpayer who elects to be subject to this section shall
10 not be entitled to increase the basis of the property as otherwise
11 required by Section 164(a) of the Internal Revenue Code with
12 respect to sales or use tax paid or incurred in connection with the
13 purchase of qualified property.

14 (f) (1) The amount of the credit otherwise allowed under this
15 section and Section 23646, including any credit carryovers from
16 prior years, that may reduce the “tax” for the taxable year shall
17 not exceed the amount of tax that would be imposed on the
18 taxpayer’s business income attributed to a LAMBRA determined
19 as if that attributable income represented all the income of the
20 taxpayer subject to tax under this part.

21 (2) Attributable income shall be that portion of the taxpayer’s
22 California source business income that is apportioned to the
23 LAMBRA. For that purpose, the taxpayer’s business income that
24 is attributable to sources in this state shall first be determined in
25 accordance with Chapter 17 (commencing with Section 25101).
26 That business income shall be further apportioned to the LAMBRA
27 in accordance with Article 2 (commencing with Section 25120)
28 of Chapter 17, modified for purposes of this section in accordance
29 with paragraph (3).

30 (3) Income shall be apportioned to a LAMBRA by multiplying
31 the total California business income of the taxpayer by a fraction,
32 the numerator of which is the property factor, plus the payroll
33 factor, and the denominator of which is two. For purposes of this
34 paragraph:

35 (A) The property factor is a fraction, the numerator of which is
36 the average value of the taxpayer’s real and tangible personal
37 property owned or rented and used in the LAMBRA during the
38 taxable year, and the denominator of which is the average value
39 of all the taxpayer’s real and tangible personal property owned or
40 rented and used in this state during the taxable year.

1 (B) The payroll factor is a fraction, the numerator of which is
2 the total amount paid by the taxpayer in the LAMBRA during the
3 taxable year for compensation, and the denominator of which is
4 the total compensation paid by the taxpayer in this state during the
5 taxable year.

6 (4) The portion of any credit remaining, if any, after application
7 of this subdivision, shall be carried over to succeeding taxable
8 years, as if it were an amount exceeding the “tax” for the taxable
9 year, as provided in subdivision (d).

10 (g) ~~(4)~~ If the qualified property is disposed of or no longer used
11 by the taxpayer in the LAMBRA, at any time before the close of
12 the second taxable year after the property is placed in service, the
13 amount of the credit previously claimed, with respect to that
14 property, shall be added to the taxpayer’s tax liability in the taxable
15 year of that disposition or nonuse.

16 ~~(2) At the close of the second taxable year, if the taxpayer has~~
17 ~~not increased the number of its employees as determined by~~
18 ~~paragraph (2) of subdivision (b), then the amount of the credit~~
19 ~~previously claimed shall be added to the taxpayer’s tax for the~~
20 ~~taxpayer’s second taxable year.~~

21 (h) If the taxpayer is allowed a credit for qualified property
22 pursuant to this section, only one credit shall be allowed to the
23 taxpayer under this part with respect to that qualified property.

24 (i) The amendments made to this section by ~~the act adding this~~
25 ~~subdivision~~ *Section 83 of Chapter 987 of the Statutes of 1999* shall
26 apply to taxable years beginning on or after January 1, 1998.

27 *SEC. 7. Section 24356.8 of the Revenue and Taxation Code is*
28 *amended to read:*

29 24356.8. (a) For each taxable year beginning on or after
30 January 1, 1995, a taxpayer may elect to treat 40 percent of the
31 cost of any Section 24356.8 property as an expense that is not
32 chargeable to the capital account. Any cost so treated shall be
33 allowed as a deduction for the taxable year in which the taxpayer
34 places the Section 24356.8 property in service.

35 (b) (1) An election under this section for any taxable year shall
36 meet both of the following requirements:

37 (A) Specify the items of Section 24356.8 property to which the
38 election applies and the portion of the cost of each of those items
39 that is to be taken into account under subdivision (a).

1 (B) Be made on the taxpayer's return of the tax imposed by this
2 part for the taxable year.

3 (2) Any election made under this section, and any specification
4 contained in that election, may not be revoked except with the
5 consent of the Franchise Tax Board.

6 (c) (1) For purposes of this section, "Section 24356.8 property"
7 means any recovery property that is:

8 (A) Section 1245 property (as defined in Section 1245(a)(3) of
9 the Internal Revenue Code).

10 (B) Purchased by the taxpayer for exclusive use in a trade or
11 business conducted within a LAMBRA.

12 (C) Purchased before the date the LAMBRA designation expires,
13 is no longer binding, or becomes inoperative.

14 (2) For purposes of paragraph (1), "purchase" means any
15 acquisition of property, but only if all of the following apply:

16 (A) The property is not acquired from a person whose
17 relationship to the person acquiring it would result in the
18 disallowance of losses under Section 267 or 707(b) of the Internal
19 Revenue Code (but, in applying Sections 267(b) and 267(c) of the
20 Internal Revenue Code for purposes of this section, Section
21 267(c)(4) of the Internal Revenue Code shall be treated as
22 providing that the family of an individual shall include only his or
23 her spouse, ancestors, and lineal descendants).

24 (B) The property is not acquired by one component member of
25 an affiliated group from another component member of the same
26 affiliated group.

27 (C) The basis of the property in the hands of the person acquiring
28 it is not determined in whole or in part by reference to the adjusted
29 basis of that property in the hands of the person from whom
30 acquired.

31 (3) For purposes of this section, the cost of property does not
32 include so much of the basis of that property as is determined by
33 reference to the basis of other property held at any time by the
34 person acquiring that property.

35 (4) This section shall not apply to any property for which the
36 taxpayer may not make an election for the taxable year under
37 Section 179 of the Internal Revenue Code because of the provisions
38 of Section 179(d) of the Internal Revenue Code.

39 (5) For purposes of subdivision (b), both of the following apply:

1 (A) All members of an affiliated group shall be treated as one
2 taxpayer.

3 (B) The taxpayer shall apportion the dollar limitation contained
4 in subdivision (f) among the component members of the affiliated
5 group in whatever manner the board shall by regulations prescribe.

6 (6) For purposes of paragraphs (2) and (5), “affiliated group”
7 has the meaning assigned to it by Section 1504 of the Internal
8 Revenue Code, except that, for these purposes, the phrase “more
9 than 50 percent” shall be substituted for the phrase “at least 80
10 percent” each place it appears in Section 1504(a) of the Internal
11 Revenue Code.

12 (7) This section shall not apply to any property described in
13 Section 168(f) of the Internal Revenue Code.

14 (8) In the case of an-S “S” corporation, the dollar limitation
15 contained in subdivision (f) shall be applied at the entity level and
16 at the shareholder level.

17 (d) For purposes of this section:

18 (1) “LAMBRA” means a local agency military base recovery
19 area designated in accordance with the provisions of Section 7114
20 of the Government Code.

21 (2) “Taxpayer” means a corporation that conducts a trade or
22 business within a LAMBRA and, for the first two taxable years,
23 has a net increase in jobs (defined as 2,000 paid hours per employee
24 per year) of one or more employees in the LAMBRA.

25 (A) ~~The net increase in the number of jobs shall be determined~~
26 ~~by subtracting the total number of full-time employees (defined~~
27 ~~as 2,000 paid hours per employee per year) the taxpayer employed~~
28 ~~in this state in the taxable year prior to commencing business~~
29 ~~operations in the LAMBRA from the total number of full-time~~
30 ~~employees the taxpayer employed in this state during the second~~
31 ~~taxable year after commencing business operations in the~~
32 ~~LAMBRA. For taxpayers who commence doing business in this~~
33 ~~state with their LAMBRA business operation, the number of~~
34 ~~employees for the taxable year prior to commencing business~~
35 ~~operations in the LAMBRA shall be zero. If the taxpayer has a net~~
36 ~~increase in jobs in the state, the credit shall be allowed only if one~~
37 ~~or more full-time employees is employed within the LAMBRA.~~

38 (B) ~~The total number of employees employed in the LAMBRA~~
39 ~~shall equal the sum of both of the following:~~

1 (i) ~~The total number of hours worked in the LAMBRA for the~~
2 ~~taxpayer by employees (not to exceed 2,000 hours per employee)~~
3 ~~who are paid an hourly wage divided by 2,000.~~

4 (ii) ~~The total number of months worked in the LAMBRA for~~
5 ~~the taxpayer by employees who are salaried employees divided~~
6 ~~by 12.~~

7 (C) ~~In the case of a taxpayer that first commences doing business~~
8 ~~in the LAMBRA during the taxable year, for purposes of clauses~~
9 ~~(i) and (ii), respectively, of subparagraph (B), the divisors “2,000”~~
10 ~~and “12” shall be multiplied by a fraction, the numerator of which~~
11 ~~is the number of months of the taxable year that the taxpayer was~~
12 ~~doing business in the LAMBRA and the denominator of which is~~
13 ~~12.~~

14 (e) Any taxpayer who elects to be subject to this section shall
15 not be entitled to claim additional depreciation pursuant to Section
16 24356 with respect to any property that constitutes Section 24356.8
17 property.

18 (f) The aggregate cost of all Section 24356.8 property that may
19 be taken into account under subdivision (a) for any taxable year
20 shall not exceed the following applicable amounts for the taxable
21 year of the designation of the relevant LAMBRA and taxable years
22 thereafter:

23		
24		The applicable
25		amount is:
26	Taxable year of designation.....	\$100,000
27	1st taxable year thereafter.....	100,000
28	2nd taxable year thereafter.....	75,000
29	3rd taxable year thereafter.....	75,000
30	Each taxable year thereafter.....	50,000

31
32 (g) This section shall apply only to property that is used
33 exclusively in a trade or business conducted within a LAMBRA.

34 (h) ~~(1)~~ Any amounts deducted under subdivision (a) with respect
35 to property that ceases to be used in the trade or business within
36 a LAMBRA at any time before the close of the second taxable
37 year after the property was placed in service shall be included in
38 income for that year.

39 ~~(2)~~ At the close of the second taxable year, if the taxpayer has
40 not increased the number of its employees as determined by

1 paragraph (2) of subdivision (d), then the amount of the deduction
2 previously claimed shall be added to the taxpayer's net income
3 for the taxpayer's second taxable year.

4 (i) Any taxpayer who elects to be subject to this section shall
5 not be entitled to claim for the same property the deduction under
6 Section 179 of the Internal Revenue Code, relating to an election
7 to expense certain depreciable business assets.

8 ~~SEC. 2.—Section 7110.5 of the Government Code is amended~~
9 ~~to read:~~

10 ~~7110.5.—A designation of a local agency military base recovery~~
11 ~~area pursuant to Section 7110 shall be for a 10-year period.~~
12 ~~However, the designation period shall expire 10 years after the~~
13 ~~fifth year of the designation period if both of the following apply:~~

14 (a) ~~The governing body has notified the department that legal~~
15 ~~title to the economic development parcels at the former base has~~
16 ~~not been transferred to the governing body and, in cases in which~~
17 ~~early transfer authority has been exercised, the terms and conditions~~
18 ~~necessary for satisfying the requirements of Section 9601 and~~
19 ~~following of Title 42 of the United States Code are met and~~
20 ~~regulatory closure has occurred.~~

21 (b) ~~The condition specified in subdivision (a) has impeded the~~
22 ~~successful utilization of the incentive program as determined by~~
23 ~~the department in the fifth year of the designation period.~~